

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

ADELPHIA COMMUNICATIONS
CORPORATION

Employer¹

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 1228

Petitioner

Case 1-RC-21878

DECISION AND DIRECTION OF ELECTION²

This case concerns the appropriateness of a petitioned-for unit of nine service technicians and maintenance technicians employed by Adelphia Communications Corporation at its Lee, Massachusetts facility. Adelphia contends that the smallest appropriate unit at the Lee facility must include its lead technician, a dispatcher, a warehouse employee, and four customer service and sales representatives (CSSRs). The

¹ The name of the Employer appears as amended at the hearing.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Petitioner would exclude the dispatcher, the warehouse employee, and the CSSRs on the ground that they lack a community of interest with the technicians. The Petitioner seeks to exclude the lead technician on the ground that he is a statutory supervisor and on the additional ground that he lacks a community of interest with the petitioned-for employees.

I find that the CSSRs, warehouse employee, and dispatcher do not share a sufficient community of interest with the service and maintenance technicians to require their inclusion in the unit. I find that the Petitioner has failed to demonstrate that the lead technician is a statutory supervisor, and I further find that he shares a sufficient community of interest with the petitioned-for employees to require his inclusion in the unit.

Background

Adelphia is engaged in the business of providing cable television and high-speed internet cable service to customers throughout the United States. Mari Sevey is the general manager of both the Lee, Massachusetts facility and another Adelphia facility located in North Adams, Massachusetts. Mark Greenleaf is the technical operations manager for both Lee and North Adams. At the Lee facility, a dispatcher, a warehouse employee, and nine technical employees, including service technicians, maintenance technicians, and a lead technician, report to Greenleaf.³ Four CSSRs in Lee, including a lead CSSR, report to Office Manager Brenda Clark.

The Lee facility services five area towns. The main facility is a small building. It has areas for the CSSRs and the dispatcher, a conference room that also serves as an employee lunch room, a small warehouse that houses cable equipment, and two garage bays, one of which has a row of lockers and bins. All of the employees report there to begin their day. A second facility called the “head end,” where satellite signals are collected and sent into a fiber optic system, is located about one to one and a half miles away.

Community of interest of the dispatcher, warehouse employee, and CSSRs with the petitioned-for service technicians and maintenance technicians

Service technicians

Service technicians go to customers’ homes to install new or upgraded cable service and high-speed internet service. This involves installing “drops,” multiple outlets, converters, and other devices; installing high-speed modems and Ethernet cards; performing limited system maintenance duties; and ensuring that customers have quality reception of cable service. In performing this work, they use meters, fitting tools, wires, drills, and hammers. They also collect customer payments and deposits.

³ There are ten technical positions, but one position is currently open.

Service Technician I is an entry-level position that requires a high school diploma and experience using hand and power tools. Electronics, installation, or construction labor experience is preferred. According to the job description for the position, it is a very active job physically, and these employees must be able to climb poles and ladders, carry ladders weighing up to 75 pounds, work outdoors in all types of weather, and perform fine manipulation on cable and electronic equipment. New technicians are sent for training either to Adelphia's facility in Coudersport, Pennsylvania or to a "climbing" school in Plymouth, Massachusetts, where they are trained in climbing ladders and poles and trained in the basics regarding signal levels, amplifiers, cable lines, and troubleshooting. Then they ride with another service technician for a period of on-the-job training. Service Technician I's may progress to Service Technician II upon completion of the Adelphia Technical Course I and six months of employment, and then to Service Technician III after completion of Adelphia Technical Course II and 12 months of employment.

Maintenance technicians

Maintenance technicians I are responsible for maintaining the infrastructure of the cable system's feeder/distribution and trunk system between the head end facility and the "tap" from which the service technicians install the service to a customer's home. They detect signal ingress and egress, do sweep alignment, installations, troubleshooting, test point measurement, and system balance. It appears that the maintenance technician II, also referred to as the head end technician, is responsible, in addition, for maintaining the head end system. As noted above, the head end is the place where Adelphia collects signals via satellite, antenna, and ring network and puts them into a fiber optic system. The head end technician ensures that the signal levels are constant and good and that the system is balanced as it comes out of the head end.

Service technicians and maintenance technicians interact regarding technical problems and sometimes work together on them. Maintenance technicians also fill in as service technicians when there is overflow service technician work.

Maintenance technicians must have a high school diploma and meet the same physical requirements as the service technicians. Maintenance technicians I must have completed one year as a service technician III as well as the Adelphia Technical Education Course III. Maintenance technicians II must have served as a maintenance technician I for one year. Maintenance technician training covers matters such as how to sweep and balance the system, how to get the right number of decibels in and out of amplifiers, how to set up return path networks from the field back to the head end, fiber optics, and training on Video on Demand. Maintenance technicians must be certified in pole climbing and the use of a bucket truck. They must be able to use signal level meters, oscillators, cable locators, AC clamp meters, spectrum analyzers, system maps, volt-ohm meters, egress monitoring devices, television test sets, basic time domain reflectometers, and sweep gear.

Dispatcher

The dispatcher, together with the lead technician, assigns work orders and routes to the service technicians and maintenance technicians. The position requires a high school diploma, one year of dispatch experience, and ability to perform dispatch functions such as answering telephones and using the radio.

Warehouse employee

The warehouse employee maintains an inventory of equipment in the warehouse. She orders equipment from a centralized warehouse in Claremont, Vermont, receives and sends packages, and issues stock and equipment to the technicians. She also cleans converters and modems and boxes them up for repair. She works half-time in Lee and half-time in North Adams. She is required to have a high school diploma and knowledge of computer systems, data entry, and report generation.

CSSRs

The four CSSRs are responsible for customer service. They work all day at the Lee facility, talking to customers on the phone or to customers who walk in. They take payments, explain customers' cable bills, respond to complaints, and try to resolve service problems before scheduling a service visit to customers' homes. They perform clerical work such as data entry and remittance processing.

The CSSRs perform a sales function in that they encourage customers to upgrade equipment or service packages. When a customer requests new or additional service or has a problem that requires a visit from a technician, the CSSR generates a work order describing the work to be done, which the dispatcher prints out and issues to the technician.

CSSRs must have a high school diploma and office skills. They receive some training that is particular to CSSRs. All employees, both technical and CSSRs, take on-line courses in subjects such as marketing and rate increases.

Contact

The service technicians and maintenance technicians have daily contact by radio with the dispatcher. The service technicians check in with the dispatcher before and after every job. They call in modem numbers and digital box numbers. When there is a problem with a customer's digital cable box, service technicians call the dispatcher, who enters in codes so that the customer receives the proper channels. If they find a problem at a pole, they call the dispatcher to request a visit by a maintenance technician. The maintenance technicians talk to the dispatcher by radio at least once an hour to check in. They may be on the radio with her constantly some days as a means to speak to the head end technician if their cell phones or radios are not working.

The service and maintenance technicians interact with the warehouse employee occasionally when they order equipment. As noted above, the warehouse employee spends only half her time in Lee. When the technicians need equipment, they complete a form and put it on a clipboard in the lead technician's office. Sometime later, the warehouse employee tells them that she has left the equipment they need in an envelope on the door of their locker or in a bin.

Service technician Donald Chabon testified that he has very little interaction with the CSSRs. At the end of the day, the service technicians and maintenance technicians drop off completed work orders in a drop box. The service technicians hand in any money they have collected to the CSSRs, who give them a receipt. Chabon testified that he almost never talks to the CSSRs apart from handing in money, although there was one instance when a CSSR handled a situation with a difficult customer, rather than the dispatcher, who usually handles such situations, and he may call a CSSR if he is unable to reach the dispatcher by radio. General Manager Sevey testified that the technicians may call the CSSR or dispatcher for information in the billing system that is not on the work order. The technicians do have a lot of contact with the CSSRs when the CSSRs fill in for the dispatcher.

Temporary and permanent interchange

The dispatcher, warehouse employee, and CSSRs do not have the requisite training to perform the work of the service or maintenance technicians, and there is no evidence that they have ever done so.

A CSSR generally fills in for the dispatcher when she is out. A maintenance technician fills in for the dispatcher on occasion, and the lead technician has also acted as the dispatcher as needed, but the record does not reveal exactly how often this occurs.

At one point, one of the maintenance technicians, Katrina Romeo, cleaned out the warehouse, received the order sheets from the other technicians, and gave them the requested material. The record does not reveal how long she worked in the warehouse or whether she still does this.

One of the maintenance technicians was previously a CSSR, and the dispatcher was once a CSSR.

Wages and benefits

Until December 31, 2004, the employees' wages were based on a wage grid. Pay for CSSRs under the wage grid ranged from \$9.58 to \$16.08. Pay for the other classifications at issue ranged as a whole from \$10.92 to \$19.67. Although there were separate base rates for the dispatcher, warehouse employee, and the various technical positions, the record does not reveal what they were. The amount that employees were paid under the old wage grid systems has now been incorporated into a new Paid for

Performance Plan under which raises will be based on performance as measured by a one to five scale. The new plan is in effect for all employees.

In addition to an hourly rate, CSSRs receive commissions on sales to new customers and on upgrades. The record does not reveal the amount or frequency of the commissions. The service technicians are also paid a commission for every new sale or upgrade they get at a customer's home. They are paid about \$10 for a new sale and also receive a fee of \$5 for boxes, converters, and modems that customers do not return. The record does not reveal the frequency with which they earn these commissions. Maintenance technicians are also eligible to earn commissions when they perform overflow work as service technicians. Maintenance technician Andrew Fudge testified that he does not have much customer contact and made perhaps two sales in the last year.

The technicians, the dispatcher, the warehouse employee, and the CSSRs are subject to the same benefits, policies, and procedures as set forth in Adelphia's employee guidebook.

Working conditions

The service technicians and maintenance technicians get their work orders from the Lee facility each morning and then spend 90 percent of their time outside the facility performing their duties, returning to the Lee facility at the end of the day. They do not eat lunch at the Lee facility. They work from 8 a.m. to 5 p.m., Monday through Friday, although one service technician works on Saturdays and another works a later shift. The dispatcher and the CSSRs spend their entire workday at the Lee facility, and the warehouse employee, as noted above, divides her time between the Lee and North Adams facilities. The record does not reveal their hours of work.

The service technicians, maintenance technicians, lead technician, and warehouse employee drive Adelphia vans and are subject to drug testing and a driving certification. The service technicians, maintenance technicians, lead technician, and warehouse employee all wear uniforms. The service technicians and maintenance technicians must wear boots with a one-inch heel so they will not fall off a ladder, and use safety belts and harnesses when climbing telephone poles. The technicians have lockers and locked bins to store equipment in. The technicians have pagers and are given a cell phone when on call. The CSSRs and the dispatcher do not drive company vehicles, are not subject to drug testing, and do not wear uniforms.

Analysis:

It is well settled Board law that a union need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit.⁴ Transerv

⁴ The Petitioner has not taken a position with respect to the technical status of the service technicians and maintenance technicians. Adelphia asserts that they are not technical employees, citing Audiovox Communications Corp., 323 NLRB 647 (1997), in which the Board found that technicians who tested, diagnosed, and repaired cellular phones were not technical employees,

Systems;⁵ Morand Bros. Beverages Co.⁶ In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. Dezcon, Inc.⁷ In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. Overnite Transportation Co.⁸ The Petitioner's desire as to the unit is a relevant consideration, though not dispositive. Florida Casino Cruises.⁹

I find that the petitioned-for unit of service and maintenance technicians is appropriate. The service and maintenance technicians report to the same supervisor. They perform similar duties, spending the vast majority of their time in the field engaged in physical work that requires the use of tools and are required to undergo similar training at Adelphia's in-house school. The service technicians may progress to the higher-rated maintenance technician positions after sufficient time and training, and the service and maintenance technicians must interact with one another regarding technical matters. Their hours of work are similar. They all wear uniforms, drive Adelphia vans, and are subject to drug testing.

where technical school training was preferred but not required, the technicians received on-the-job training, but the record did not reveal the extent and nature of the on-the-job training, and there was no evidence the technicians had to be licensed or certified or pass any exams. In this case, in contrast, the technicians may be technical employees. They must take anywhere from one to three in-house technical courses to be qualified for their positions and must be certified in pole-climbing and the use of a bucket truck. I also note that in Continental Cablevision of St. Louis County, Inc., 298 NLRB 973 (1990), the Board approved a stipulated unit composed of technical employees employed by a cable television company, including service technicians, a construction lineman, and a head end technician who performed duties similar to those of the service technicians and maintenance technicians in this case.

The issue of the technical status of the service technicians and maintenance technicians was not litigated, however, and I need not reach the issue, because I would approve a unit composed of those technicians in any event under the community-of-interest standard.

⁵ 311 NLRB 766 (1993).

⁶ 91 NLRB 409 (1950).

⁷ 295 NLRB 109, 111 (1989).

⁸ 322 NLRB 723, 724 (1996), citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

⁹ 322 NLRB 857, 858 (1997), citing Airco, Inc., 273 NLRB 348 (1984).

CSSRs

I find that the unit of service and maintenance technicians need not include the CSSRs. The Board has typically excluded customer service employees such as CSSRs from units of technicians. Deposit Telephone Company, Inc.¹⁰ (customer service representatives excluded from a petitioned-for unit of customer service technicians employed by a telephone company); Harron Communications, Inc.¹¹ (customer service representatives excluded from a petitioned-for unit of technicians employed by a cable television company); Cablevision Systems Development Company¹² (telephone service representatives and business office representatives excluded from petitioned-for unit of technicians employed by a cable television company).

Here, the CSSRs are separately supervised from the technicians and perform completely distinct duties. They spend all of their time at the Lee facility talking to customers on the telephone or in person about service and billing problems, making sales, handling customer payments, and performing related clerical tasks. The technicians, on the other hand, spend 90 percent of their time in the field performing physical work with tools. Unlike the technicians, the CSSRs are not required to take pole-climbing or technical courses, do not wear uniforms, do not drive company vehicles, and are not subject to drug testing. The CSSRs and technicians generally have only limited contact with one another, usually at the end of the day. Because of the different qualifications and training required for the two types of jobs, there is no temporary interchange between the CSSRs and technicians. Only one maintenance technician was once a CSSR, and there is no evidence that service or maintenance technicians have ever transferred to CSSR positions.

Warehouse employee

Although the warehouse employee shares common supervision with the technicians and, like them, wears a uniform, drives a company vehicle, and is subject to drug testing, I find that other factors militate against requiring her inclusion in the petitioned-for unit. She spends only half her time at the Lee facility and appears to spend all her time at the warehouse rather than out in the field like the technicians. Her contact with the technicians is brief and limited to letting them know that their requested supplies are in. Her duties are completely different and do not involve the skilled physical work performed by the technicians. She does not undergo the same technical training. She never performs the technician's work, as she is not qualified to do so. It appears that at one point, one of the maintenance technicians performed some of her duties in issuing stock to technicians, but the record does not reveal the circumstances or frequency with which this has occurred. There have been no permanent transfers between the positions.

¹⁰ 328 NLRB 1029 (1999).

¹¹ 308 NLRB 62 (1992).

¹² 251 NLRB 1319, ALJD at 1323-1324 (1980).

Accordingly, the warehouse employee shall be excluded from the unit. Cablevision Systems Development Co.¹³ (warehouse employees who dispense material and who do not go into the field excluded from a petitioned-for unit of technicians, head end technicians, installation employees, and construction employees).

Dispatcher

The dispatcher's community of interest with the technicians presents a closer question in light of their constant daily contact by radio and common supervision by the technical operations manager. Further, a maintenance technician and the lead technician have at least occasionally acted as the dispatcher, although the record does not reveal the frequency with which this occurs. Nonetheless, I find these factors to be outweighed by the significant differences in the duties, skills, and working conditions of the technicians, as compared to the dispatcher. The dispatcher spends all day at the Lee facility talking on the radio, unlike the technicians who are out in the field performing physical work with tools. The dispatcher does not have the technical training or skills to fill in for the technicians. Unlike the technicians, the dispatcher does not wear a uniform or drive a company vehicle and is not required to undergo drug testing. Cablevision Systems Development Co.¹⁴ (four dispatchers who transmit the service calls to service technicians by radio excluded from unit of service technicians and installers, where they do not wear uniforms, rarely go into the field, do not work with tools like the technicians, and have no contact with the technicians other than by telephone or radio).¹⁵

Supervisory status and community of interest of the lead technician

Lead technician Jim Karpinski oversees construction, which involves looking at new sites to see how many homes are involved, mapping the system, and determining what kind of plant and equipment is needed. He completes paperwork such as applications to the utilities from which Adelphia rents poles. He also coordinates the work flow for the service and maintenance technicians. He and the dispatcher assign the

¹³ Id., ALJD at 1324.

¹⁴ Id., ALJD at 1323.

¹⁵ Innovative Communications Corp., 333 NLRB 665 (2001), cited by Adelphia, does not require a different result. The parties in that case merely entered into a stipulated election agreement in a unit that included maintenance employees, dispatchers, customer service representatives, and cashiers. The community of interest of the dispatchers with the maintenance employees was not litigated or decided by the Board. The Board has long held that the appropriateness of a particular unit that has not been litigated in a Board proceeding is not given any weight in subsequent proceedings where the unit issues are fully litigated. Triangle Building Products Corp., 338 NLRB No. 29 (Sept. 30, 2002). Further, it is not clear that the maintenance employees in that unit were the sort of technicians at issue here, because in Innovative Communications there was also a stipulated election agreement in a second unit composed of customer service technicians, installers, and construction employees whose duties may have been more comparable to those of the technicians at Adelphia.

routes to the technicians each morning. Karpinski tries to balance the routes by geography, workload, how fast the technicians work, and their expertise. He can assign supplementary employees if he feels a technician needs assistance. Karpinski must clear all overtime work with the technical operations manager, but Karpinski selects who will work the overtime.

Karpinski is responsible for quality control work, which involves going into the field to evaluate jobs performed by the technician. He reviews his quality assessment with the technicians, telling them that they did or did not do a good job, and instructs them how to perform the work. Service technician Chabon testified that one time he wanted to try to do a “tap cut” into the main line at a pole so that he could connect a cable from there to a customer’s house, but Karpinski told him that he did not know how to do it very well.

Employees who want time off complete an absence request form and bring it to Karpinski, who notes the dates on a calendar and takes the forms to the technical operations manager, who must approve it. The Petitioner introduced into evidence three recent absence request forms that had been initialed only by Karpinski, but General Manager Sevey testified that the requests had not yet been fully approved because both he and the technical operations manager must sign the forms first.¹⁶ Chabon testified that the technical operations manager approves time off whenever the lead technician approves it. Maintenance technician Andrew Fudge testified that any conflicts in vacation requests are resolved on the basis of seniority. He testified that Karpinski once denied a service technician’s vacation request because of a conflicting request by a more senior technician and that, because it was the end of the year, the technician lost two days’ vacation.

The technical operations manager completes the technicians’ performance reviews. The job description for the lead technician states that he makes recommendations and provides feedback to management in the evaluation process, but there is no record evidence that he has ever done so or what his role is in the evaluation process, if any. Sevey testified that the lead technician has no authority to adjust grievances and that the technicians are to bring any grievances to the technical operations manager.

Chabon testified that, in October 2004, Karpinski gave him a verbal warning. Chabon testified that he appealed the warning to Greenleaf, who rescinded it. Sevey testified that the lead technician has no authority to discipline or fire employees and that Greenleaf and Clark are the only two individuals who are authorized to discipline

¹⁶ Sevey testified that the lead technician is not required to sign the absence request forms, nor had Sevey requested him to do so. Sevey testified that Greenleaf, the technical operations manager, must approve all absence requests for the technical staff and the office manager must approve all absence requests for the CSSRs. The requests in evidence were for upcoming vacations in May, July, and December 2005, pursuant to a January 2005 memo asking employees to put in their requests for all vacations for the coming year.

employees. Greenleaf and Clark sign any warnings, including written records of verbal warnings, and Sevey must approve all discipline prior to implementation. Sevey testified that there is no record that Karpinski gave a verbal warning to Chabon, and that Chabon has been disciplined twice recently by Greenleaf, who signed the warnings and met with Chabon concerning them. Sevey testified that Karpinski would report any technical mistakes to Greenleaf, who would counsel the technician or require training.

Karpinski does not take a route himself and does not generally perform service technician or maintenance technician work. However, he helps the technicians in the field when they have a problem or in an emergency and is the back-up when they are on call. For example, Chabon once called Karpinski on a holiday to assist him in getting a line back up when a car crashed into a pole. The record does not reveal how often this occurs. Karpinski wears a uniform. He drives a company vehicle when necessary and is subject to the company's drug testing policy.

Karpinski has been with Adelphia for 30 years and is very knowledgeable. The job description for the lead technician position states that it requires a high school diploma, with technical school preferred. The job requires a minimum of four years of cable TV-related technical experience and knowledge of sweep equipment and head end equipment. Knowledge of fiber optic technology and computers is preferred.

The lead technician earns around \$19 per hour. He has a "quasi" office with a desk, a phone, and a computer. He works from 8 a.m. to 5 p.m. He has a master key to the employees' lockers, as does the warehouse employee.

Supervisory Status

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.¹⁷ The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. New Fern Restorium Co.¹⁸ The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care¹⁹ The Board will refrain from construing supervisory status too

¹⁷ 273 NLRB 1677, 1689 (1985).

¹⁸ 175 NLRB 871 (1969).

¹⁹ 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.²⁰

The Petitioner asserts that the lead technician is a statutory supervisor by virtue of his authority to direct employees, assign work orders, schedule overtime, approve requests for leave, and discipline employees. I find, however, that the Petitioner has failed to demonstrate that the lead technician possesses statutory authority.

Assignment and Direction –

Karpinski and the dispatcher assign the routes to the technicians each morning. In making these assignments, Karpinski tries to balance the routes by geography, workload, how fast the technicians work, and their expertise. He can assign supplementary employees if he feels a technician needs assistance. The ability to make assignments in order to balance workloads or provide sufficient manpower for a particular task does not indicate supervisory authority. Byers Engineering Corp.²¹ Similarly, where an individual makes assignments based on his familiarity with the skills of the employees being assigned, this does not rise to the level of supervisory authority. Clark Machine Corp.²²

Karpinski is responsible for quality control work, which involves going into the field to evaluate jobs performed by the technician. He reviews his quality assessment with the technicians, telling them that they did or did not do a good job, and instructs them how to perform the work. On one occasion, he told a technician that the technician did not have sufficient skill to perform a certain task.

The fact that Karpinski monitors the quality of the work being performed and can talk to employees about their performance, tells them how to do something, or instructs them to do or not do a particular task does not support a finding of supervisory status. Hexacomb Corp.²³ (foremen who are experienced operators and whose primary responsibilities include monitoring production and training employees regarding the use of work procedures are not supervisors).

Scheduling Overtime and Approving Time Off –

With respect to his role in scheduling overtime, the lead technician must clear all overtime work with the technical operations manager. Karpinski's role in selecting which employee will work the overtime does not render him a supervisor, where there is

²⁰ 308 NLRB 101, 102 (1992).

²¹ 324 NLRB 740, 741 (1997).

²² 308 NLRB 555 (1992).

²³ 313 NLRB 983, 984 (1994).

no record evidence that overtime work occurs with any regularity, or that Karpinski must use independent judgment in the selection process. Nor is there any evidence that he can require employees to work overtime. St. Francis Medical Center-West²⁴ (production leader not a supervisor where he may request an employees to work overtime but they have the right to decline). While Karpinski may approve the technicians' leave requests on a preliminary basis, Sevey's testimony that both she and Greenleaf must approve the vacation requests was uncontroverted. Further, there was evidence of only one instance in which Karpinski ever denied a technician's leave request, and that was on the ground that the request of another technician with greater seniority took precedence. Approval or denial of leave requests based on a seniority system is ministerial and does not require independent judgment. Bakersfield Californian²⁵ (assistant editor who prepares the work schedule is not a supervisor where conflicts in vacation requests are resolved by seniority).

Discipline –

Assuming the lead technician has authority to discipline employees, which Adelphia disputes, the only example of this asserted authority is that he issued a verbal warning on one occasion. This single exercise of disciplinary authority is too sporadic to constitute supervisory power and the Board has held that issuing verbal warnings is too minor a disciplinary function to confer supervisory authority. Passavant Health Center.²⁶ It does not appear, in any event, that Karpinski has authority even to effectively recommend verbal reprimands, because the Petitioner's witness testified that on the one occasion he issued one, the technical operations manager reversed him.

Other Indicia –

The Petitioner also asserts that the lead technician must be a supervisor because he does not work routes like the other technicians, but works in the office designing systems for construction; because he works directly with the technicians, unlike the technical operations manager who is present in Lee only half the time; and because his exclusion from the unit does not create an unrealistic ratio of supervisors to technicians. The fact that the lead technician does not perform technicians' work on a daily basis does not render him a supervisor. Hexacomb Corp.²⁷ (foremen who do not work the line as a rule unless there is a problem are not supervisors). Further, these are, at most, secondary indicia of supervisory status that are insufficient by themselves to establish supervisory

²⁴ 323 NLRB 1046, 1047 (1997).

²⁵ 316 NLRB 1211 1219 (1995).

²⁶ 284 NLRB 887, 889 (1987).

²⁷ Supra at 983-984.

status in the absence of evidence presented that the lead technician possesses any one of the primary Section 2(11) powers. Ken-Crest Services.²⁸

Community of Interest

Finally, the Petitioner asserts that the lead technician does not share a community of interest with the other technicians because he does not perform cable installation and repair work in the field on a daily basis. Rather, he works primarily in the office and performs administrative work such as assigning work orders, designing systems for new construction, and conducting quality assurance assessments. I find that the lead technician shares a sufficient community of interest with the others to require his inclusion in the unit. He shares common supervision with the other technicians. Although he does not work in the field on a daily basis, he has the same technical qualifications, training, and skills as the technicians and assists them in the field in emergencies. He has frequent contact with the technicians concerning technical matters. He wears a uniform, drives a company vehicle, and is subject to the same drug testing policy as other unit employees. He certainly has a greater community of interest with the other technicians than with the CSSRs, dispatcher, and warehouse employee.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians, maintenance technicians, including the head end technician, and lead technician employed by the Employer at its Lee, Massachusetts facility, but excluding dispatchers, warehouse employees, customer service and sales representatives, clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the

²⁸ 335 NLRB No. 63, slip op. at 3 (2001).

designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers Local 1228.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc.;²⁹ NLRB v. Wyman-Gordon Co.³⁰ Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility.³¹ In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before March 18, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 25, 2005.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 11th day of March, 2005.

²⁹ 156 NLRB 1236 (1966).

³⁰ 394 U.S. 759 (1969).

³¹ 315 NLRB 359 (1994).